

*A.F. Faw*



Utility Patent Application

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re the Patent Application of: )  
 )  
Brad Handler )  
 )  
Serial No.: 09/457,466 ) Art Unit: 3621  
 )  
Filed: December 8, 1999 )  
 )  
For: Integrated Auction ) Examiner: Elisca, Pierre E.  
 )  
 )

Mail Stop Appeal Brief – Patents  
Commissioner for Patents  
P.O. Box 1450  
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**APPEAL BRIEF  
IN SUPPORT OF APPELLANTS' APPEAL  
TO THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Sir:

Applicant (hereinafter "Appellant") hereby submits this Brief in triplicate in support of its appeal from a final decision by the Examiner, mailed April 13, 2004, in the above-captioned case. Appellant respectfully requests consideration of this appeal by the Board of Patent Appeals and Interferences (hereinafter "Board") for allowance of the above-captioned patent application.

<b>FIRST CLASS CERTIFICATE OF MAILING</b>	
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**I. REAL PARTY IN INTEREST**

The invention is assigned to eBay Inc. of 2145 Hamilton Ave., San Jose, California 95125.

**II. RELATED APPEALS AND INTERFERENCES**

To the best of Appellant knowledge, there are no appeals or interferences related to the present appeal that will directly affect, be directly affected by, or have a bearing on the Board's decision.

**III. STATUS OF THE CLAIMS**

Claims 3-24 are currently pending in the above-referenced application. No claims have been allowed. Claims 3-24 stand rejected as being unpatentable over Fisher et al, U.S. Patent No. 6,243,691 ("Fisher") in view of Cooper, "Going, going, gone, Tradition Gives Way to Technology, British Telecom World," March 1990 ("Cooper") and further in view of Biais et al., "An Empirical Analysis of the Limit Order Book and the Order Flow in the Paris Bourse," December 1995 ("Biais") in the final Office Action, mailed April 13, 2004, and are the subject of this appeal.

**IV. STATUS OF AMENDMENTS**

In response to the final Office Action, mailed on April 13, 2004, rejecting claims 3-24, Appellant timely filed a Notice of Appeal on August 11, 2004.

A copy of all claims on appeal is attached hereto as Appendix of Claims.

**V. SUMMARY OF THE INVENTION**

Auctions conducted across the Internet have become a very popular method of selling goods and services (for simplicity, "goods and services" are hereinafter collectively referred to as "items"). Once a seller has submitted a request to sell an item,

the item becomes available for bidding, with the bidding to close typically at some predetermined time (e.g., at noon, 3 days later). Potential buyers are able to view a description and possibly an image of the item, and submit bid for the item. The potential buyer that submitted the highest bid on the item at the end of the auction typically wins the auction. Auction houses that run live, real-time, on-site auctions ("traditional auctions") continue to experience much success. However, geographic barriers, travel costs, and other constraints limit the participation in such auctions.

One embodiment relates to a computerized method and system are provided for conducting an auction for selling an item over one or more networks. Prior to a live, in-person auction, a starting bid is established by performing an interactive pre-auction bidding process for a predetermined amount of time. The pre-auction bidding process includes communicating the item to online users, receiving bids for the item from online bidders, and choosing, as the starting bid, a highest bid from the bids received. The starting bid for the item is then communicated to the live, in-person auction. During the live, in-person auction, the bidding information associated with the item in the online environment is updated to reflect a current bid associated with the item. The bidding on behalf of the online bidder, based on the maximum proxy bid, is performed against one or more live bidders that are participating in the live, in-person auction (claim 1; see also Summary of the Invention, pages 2-3, Specification, pages 9-12).

## **VI. ISSUE PRESENTED**

Whether the present invention, as recited by claims 3-24, properly stands rejected as being unpatentable over Fisher in view of Cooper and further in view of Biais.

## **VII. GROUPING OF CLAIMS**

For the purposes of this appeal, the claims are grouped as follows:

Claims 3-24 stand and fall together.

## **VIII. ARGUMENTS**

Claims 3-24 stand rejected under 35 U.S.C. § 103 stand rejected as being unpatentable over Fisher in view of Cooper and further in view of Biais as stated in the final Office Action, mailed April 13, 2004.

### **A. BECAUSE THERE IS NO MOTIVATION TO COMBINED FISHER WITH COOPER AND BIAIS, THE REJECTION OF THE CLAIMS UNDER 35 U.S.C. § 103 IS IMPROPER.**

As an initial matter, Appellant submits there is no motivation to combine Fisher with Cooper and with Biais. For example, as acknowledged by the Examiner, Fisher “does not explicitly disclose . . . live auction” (see Office Action, page 3, mailed April 13, 2004). Not only does Fisher not disclose live auction, but also it teaches away from live auctions. For example, Fisher discloses a “method and system for processing and transmitting electronic auction information” in which “*bids are recorded* by the system and the bidders are updated with the current auction status location. When appropriate, the system closes the auction from further bidding and notifies the winning bidders and losers as to the auction outcome” (Abstract). Fisher’s *recording of the bids* is to avoid certain limitations. Note that Fisher expressly states that the “limitations and

disadvantages of physical auctions, *even when telephone bidding or bidding by facsimile is permitted*, serve to discourage a large number of bidders and ultimately lead to lower selling prices to the economic detriment of the auctioneer and seller” (col. 2, lines 5-10).

Cooper discloses “transmitt[ing] bids *through telephone lines and data channels*, allowing buyers to place their bids as though they were in Bond Street auction room itself – the *system sufficiently rapid to allow them to compete with the live auction*” (page 1, paragraph 10; emphasis provided). Biais discloses “gradually shift[ing] from a daily call auction to a computerized limit order market in which *trading occurs continuously from 10 a.m. to 5 p.m. . . . [t]he opening price at 10 a.m. is determined by a call auction . . . [p]rior to this call auction, a sequence of tentative call auctions occurs before the opening*, in order to facilitate the *price discovery process*” (page 3; emphasis provided).

Given that Fisher discloses reasons to avoid live auctions, while Cooper and Biais disclose of such auctions (e.g., telephone auction, floor auction), there is no motivation or suggestion to combine Fisher with Cooper or Biais. Hence, a prima facie case of obviousness has not been established by Fisher in view of Cooper and further in view of Biais. Accordingly, Appellant respectfully submits that claims 3-24 are allowable over Fisher, Cooper and Biais.

**B. BECAUSE FISHER, COOPER AND BIAIS, NEITHER INDIVIDUALLY NOR WHEN COMBINED, TEACH OR REASONABLY SUGGEST PRIOR TO A LIVE, IN-PERSON AUCTION, ESTABLISHING A STARTING BID FOR AN ITEM IN AN ONLINE ENVIRONMENT BY PERFORMING**

**AN INTERACTIVE PRE-AUCTION BIDDING PROCESS,  
THE REJECTION OF THE CLAIMS UNDER 35 U.S.C. §  
103 IS IMPROPER.**

Claim 3, recites:

A method, comprising:  
prior to a live, in-person auction,  
establishing a starting bid for an item in an online environment by  
performing an interactive pre-auction bidding process in the online  
environment for a predetermined amount of time, the pre-auction  
bidding process including  
communicating the item to online users,  
receiving bids for the item from online bidders, and  
choosing as the starting bid a highest bid from the bids received;  
communicating the starting bid for the item to the live, in-person auction;  
and  
during the live, in-person auction,  
updating bidding information associated with the item in the online  
environment to reflect a current bid associated with the item in the  
live, in-person auction,  
accepting a bid from an online bidder in the online environment reflecting  
the online bidder's maximum proxy price, and  
bidding on behalf of the online bidder against one or more live bidders  
that are participating in the live, in-person auction based upon the  
maximum proxy price.  
(emphasis provided)

Even if Fisher, Cooper and Biais, were properly combinable, none individually  
nor when combined, teach or reasonably suggest prior to a live, in-person auction,  
establishing a starting bid for an item in an online environment by performing an  
interactive pre-auction bidding process, choosing as the starting bid a highest bid from  
the bids received, performing the interactive pre-auction bidding process for a  
predetermined amount of time, and bidding on behalf of the online bidder against one or  
more live bidders that are participating in the live, in-person auction based upon the  
maximum proxy price, as recited by claim 3. Further, as acknowledged by the Examiner

“[n]either Fisher nor Cooper discloses in person auction, establishing a starting bid for an item in an online environment by performing an interactive pre-auction bidding process in the online environment for a predetermined amount of time, the pre-auction bidding process including communicating the item to online users, receiving bids for the item from online bidders, and choosing as the starting bid a highest bid from the bids received” (Office Action, mailed 4/13/04, page 4).

Biais discloses the “opening price at 10 a.m. is *determined by a call auction*” (page 3; emphasis provided). The *first call auction at 10 a.m. sets the opening price*, since trading starts at 10 a.m., and *setting of the opening price whatever that may be* at the opening time (10 a.m.) is not the same as performing an interactive pre-auction bidding process to establish the starting price, as recited by claim 3. Stated differently, for example, the establishing of the starting price, as recited by claim 3, involves an interactive pre-auction bidding process to be used to establish the starting price, while, in Biais, the *setting of the opening price* simply refers to setting of an *opening price whatever that may be* at the opening time of 10 a.m.

**C. BECAUSE FISHER, COOPER AND BIAIS, NEITHER INDIVIDUALLY NOR WHEN COMBINED, TEACH OR REASONABLY SUGGEST PRIOR TO A LIVE, IN-PERSON AUCTION, CHOOSING AS THE STARTING BID A HIGHEST BID FROM THE BIDS RECEIVED, THE REJECTION OF THE CLAIMS UNDER 35 U.S.C. § 103 IS IMPROPER.**

The sequence of tentative call auctions, prior to the [first] call auction, of Biais is to facilitate the “price *discovery* process” (page 3; emphasis provided) and is not the same as “choosing as the starting bid a highest bid from the bids received” as recited by claim 3 (emphasis provided). The process of *discovering the price* is not same as establishing a starting bid by choosing as the starting bid a highest bid from the bids received, as recited by claim 3. At best, Biais discloses a *price discovery process*, which does not include “prior to a live, in-person auction . . . communicating the item to online users, receiving bids for the item from online bidders, and choosing as the starting bid a highest bid from the bids received” as recited by claim 3 (emphasis provided).

**D. BECAUSE FISHER, COOPER AND BIAIS, NEITHER INDIVIDUALLY NOR WHEN COMBINED, TEACH OR REASONABLY SUGGEST PERFORMING AN INTERACTIVE PRE-AUCTION BIDDING PROCESS FOR A PREDETERMINED AMOUNT OF TIME, THE REJECTION OF THE CLAIMS UNDER 35 U.S.C. § 103 IS IMPROPER.**

Although Biais discloses “*trading occurs* continuously from 10 a.m. to 5 p.m.” (page 3; emphasis provided), it does not teach or reasonably suggest “performing an interactive pre-auction bidding process in the online environment for a predetermined amount of time” as recited by claim 3 (emphasis provided). Stated differently, the duration of time (10 a.m. to 5 p.m.) as disclosed by Biais refers to the time period for *live trading* and is not same as predetermined amount of time set aside for performing an interactive pre-auction bidding process that is performed prior to live, in-person auction,

as recited by claim 3. As discussed above, and as recited by claim 3, the interactive pre-auction bidding process is performed for a predetermined amount of time prior to the live, in-person auction to establish a starting bid.

**E. BECAUSE FISHER, COOPER AND BIAIS, NEITHER INDIVIDUALLY NOR WHEN COMBINED, TEACH OR REASONABLY SUGGEST PROXY BIDDING, THE REJECTION OF THE CLAIMS UNDER 35 U.S.C. § 103 IS IMPROPER.**

Biais, like Fisher and Cooper, does not teach or reasonably suggest proxy bidding including bidding on behalf of the online bidder against one or more live bidders that are participating in the live, in-person auction, as recited by claim 3. For example, Fisher discloses “[a] bid manager then *checks to see* if there are any *active proxy bids marked as unsuccessful* . . . [from the ones] established by the bidder *when his or her initial bid is placed*” (col. 8, lines 56-62; emphasis provided). Stated differently, the proxy bidding of Fisher is limited to *bidders recording their bids* and not proxy bidding in a live auction. This is not the same as bidding on behalf of the online bidder against one or more live bidder that are participating in the live, in-person auction, as recited by claim 3.

Hence, Fisher, Cooper and Biais, neither individually nor when combined, teach or reasonably suggest prior to a live, in-person auction, establishing a starting bid for an item in an online environment by performing an interactive pre-auction bidding process, choosing as the starting bid a highest bid from the bids received, performing the interactive pre-auction bidding process for a predetermined amount of time, and bidding

on behalf of the online bidder against one or more live bidders that are participating in the live, in-person auction based upon the maximum proxy price, as recited by claim 3.

Accordingly, for at least the reasons set forth above, Appellant respectfully submits that claim 3 and its dependent claims are allowable.

With regard to independent claims 4, 5, 6, 18 and 22, they contain limitations similar to those of claim 3. Accordingly, Appellant respectfully submits that independent claims 4, 5, 6, 18 and 22 and their dependent claims are allowable over Fisher, Cooper and Biais for the reasons provided above.

## IX. CONCLUSION

Appellant respectfully submits that all the appealed claims in this application are patentable and request that the Board of Patent Appeals and Interferences overrule the Examiner and direct allowance of the rejected claims.

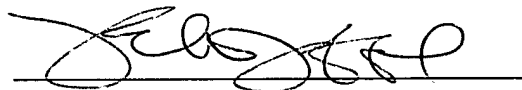
This brief is submitted in triplicate, along with a check for \$330.00 to cover the appeal fee for one other than a small entity as specified in 37 C.F.R. § 1.17(c). Please charge any shortages and credit any overpayment to our Deposit Account No. 02-2666.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN

Date: \_\_\_\_\_

9/10/04



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## APPENDIX OF CLAIMS

(37 C.F.R. § 1.192(c)(9))

3. A method, comprising:  
  
prior to a live, in-person auction,  
  
establishing a starting bid for an item in an online environment by performing an  
  
interactive pre-auction bidding process in the online environment for a  
  
predetermined amount of time, the pre-auction bidding process including  
  
communicating the item to online users,  
  
receiving bids for the item from online bidders, and  
  
choosing as the starting bid a highest bid from the bids received;  
  
communicating the starting bid for the item to the live, in-person auction; and  
  
during the live, in-person auction,  
  
updating bidding information associated with the item in the online environment  
  
to reflect a current bid associated with the item in the live, in-person  
  
auction,  
  
accepting a bid from an online bidder in the online environment reflecting the  
  
online bidder's maximum proxy price, and  
  
bidding on behalf of the online bidder against one or more live bidders that are  
  
participating in the live, in-person auction based upon the maximum proxy  
  
price.
4. A method, comprising:  
  
prior to a live, in-person auction, establishing a starting bid for an item in an

online environment by performing an interactive pre-auction bidding process in the online environment for a predetermined amount of time, the pre-auction bidding process including communicating the item to online users, receiving bids for the item from online bidders, and choosing as the starting bid a highest bid from the bids received; communicating the starting bid for the item to the live, in-person auction; and performing the live, in-person auction.

5. A system, comprising:

a storage device having stored therein a one or more routines for integrating an online bidding process with a live, in-person auction; and a processor coupled to the storage device, the processor to execute the one or more routines to provide feedback to online bidders in an online environment during the live, in-person auction and serve as a proxy bidder for the online bidders, where:

prior to the live, in-person auction, a starting bid is established for an item in the online environment by performing an interactive pre-auction bidding process in the online environment for a predetermined amount of time, the pre-auction bidding process including communicating the item to online users, receiving bids for the item from online bidders, and choosing as the starting bid a highest bid from the bids received, communicating the starting bid for the item to the live, in-person auction,

during the live, in-person auction, feedback is provided to the online bidders by updating bidding information associated with the item in the online environment to reflect a current bid associated with the item during the live, in-person auction, and proxy bidding is accomplished by accepting a bid from one or more of the online bidders reflecting the online bidders' maximum proxy price, and bidding on behalf of the one or more online bidders against one or more live bidders participating in the live, in-person auction based upon the maximum proxy price.

6. A machine-readable medium having stored thereon data representing sets of instructions which, when executed by a machine, cause the machine to:
  - prior to a live, in-person auction,
  - establish a starting bid for an item in an online environment by performing an interactive pre-auction bidding process in the online environment for a predetermined amount of time, the pre-auction bidding process including communicating the item to online users,
  - receiving bids for the item from online bidders, and
  - choosing as the starting bid a highest bid from the bids received;
  - communicate the starting bid for the item to the live, in-person auction; and
  - during the live, in-person auction,
  - update bidding information associated with the item in the online environment to reflect a current bid associated with the item in the live, in-person auction,
  - accept a bid from an online bidder in the online environment reflecting the online

bidder's maximum proxy price, and  
bid on behalf of the online bidder against one or more live bidders that are  
participating in the live, in-person auction based upon the maximum proxy  
price.

7. The method of claim 3, wherein the communicating of the item to the online users comprises providing access to catalog information for items available in the live, in-person auction, to enable the online users to perform one or more of the following: search the catalog information for the item, view the item, and bid on the item during the pre-auction bidding process.
8. The method of claim 3, further comprising providing the online users with an audio webcast of the live, in-person auction.
9. The method of claim 3, further comprising providing the online users with a video webcast of the live, in-person auction.
10. The method of claim 4, wherein the performing of the live, in-person auction further comprises:  
updating bidding information associated with the item in the online environment  
to reflect a current bid associated with the item in the live, in-person  
auction,  
accepting a bid from an online bidder in the online environment reflecting the  
online bidder's maximum proxy price, and  
bidding on behalf of the online bidder against one or more live bidders that are  
participating in the live, in-person auction based upon the maximum proxy  
price.

11. The method of claim 4, wherein the communicating of the item to the online users comprises providing access to catalog information for items available in the live, in-person auction, to enable the online users to perform one or more of the following: search the catalog information for the item, view the item, and bid on the item during the pre-auction bidding process.
12. The method of claim 4, further comprising providing the online users with an audio webcast or a video webcast of the live, in-person auction.
13. The system of claim 5, wherein the processor is further to provide access to catalog information for items available in the live, in-person auction, to enable the online users to perform one or more of the following: search the catalog information for the item, view the item, and bid on the item during the pre-auction bidding process.
14. The system of claim 5, wherein the bidding on behalf of the one or more online bidders comprises bidding the bid price for the item when an amount of the bid price exceeds the current bid for the item.
15. The machine-readable medium of claim 6, wherein the communicating of the item to the online users comprises providing access to catalog information for items available in the live, in-person auction, to enable the online users to perform one or more of the following: search the catalog information for the item, view the item, and bid on the item during the pre-auction bidding process.
16. The machine-readable medium of claim 6, wherein the sets of instructions, which when executed by the machine, further cause the machine to provide the online users with an audio webcast of the live, in-person auction.

17. The machine-readable medium of claim 6, wherein the sets of instructions, which when executed by the machine, further cause the machine to provide the online users with a video webcast of the live, in-person auction.
18. A machine-readable medium having stored thereon data representing sets of instructions which, when executed by a machine, cause the machine to:  
prior to a live, in-person auction, establish a starting bid for an item in an online environment by performing an interactive pre-auction bidding process in the online environment for a predetermined amount of time, the pre-auction bidding process including  
communicating the item to online users,  
receiving bids for the item from online bidders, and  
choosing as the starting bid a highest bid from the bids received;  
communicate the starting bid for the item to the live, in-person auction; and  
perform the live, in-person auction.
19. The machine-readable medium of claim 18, wherein the sets of instructions which, when executed by the machine, further cause the machine to:  
during the live, in-person auction, update bidding information associated with the item in the online environment to reflect a current bid associated with the item in the live, in-person auction,  
accept a bid from an online bidder in the online environment reflecting the online bidder's maximum proxy price, and

bid on behalf of the online bidder against one or more live bidders that are participating in the live, in-person auction based upon the maximum proxy price.

20. The machine-readable medium of claim 18, wherein the communicating of the item to the online users comprises providing access to catalog information for items available in the live, in-person auction, to enable the online users to perform one or more of the following: search the catalog information for the item, view the item, and bid on the item during the pre-auction bidding process.
21. The machine-readable medium of claim 18, wherein the sets of instructions which, when executed by the machine, further cause the machine to provide the online users with an audio webcast or a video webcast of the live, in-person auction.
22. A system, comprising:
  - a storage medium; and
  - a processor coupled to the storage medium, the processor to prior to a live, in-person auction, establish a starting bid for an item in an online environment by performing an interactive pre-auction bidding process in the online environment for a predetermined amount of time, the pre-auction bidding process including
    - communicating the item to online users,
    - receiving bids for the item from online bidders, and
    - choosing as the starting bid a highest bid from the bids received,
  - communicate the starting bid for the item to the live, in-person auction, and

perform the live, in-person auction.

23. The system of claim 22, wherein the processor is further to:
- during the live, in-person auction, updating bidding information associated with
- the item in the online environment to reflect a current bid associated with
- the item in the live, in-person auction;
- accepting a bid from an online bidder in the online environment reflecting the
- online bidder's maximum proxy price; and
- bidding on behalf of the online bidder against one or more live bidders that are
- participating in the live, in-person auction based upon the maximum proxy
- price.
24. The system of claim 22, wherein the communicating of the item to the online
- users comprises providing access to catalog information for items available in the
- live, in-person auction, to enable the online users to perform one or more of the
- following: search the catalog information for the item, view the item, and bid on
- the item during the pre-auction bidding process.